

Ameritech Michigan also argues that MCI's request was not denied by Ameritech Michigan in an attempt to thwart MCI's novel or specialized interconnection requirements. Ameritech Michigan asserts that this case involves a request for a new network element and does not involve an access or interconnection issue. Although acknowledging that GR303 technology is a recent development in digital loop carrier systems, Ameritech Michigan asserts that there is nothing novel or specialized about the technology of the interconnection or access involved in MCI's request. Indeed, Ameritech Michigan asserts that the only novelty presented by MCI's request is related to the requirement that Ameritech Michigan pay all upfront costs of acquiring new equipment that will be dedicated solely to MCI's use. Further, Ameritech Michigan insists that the ALJ read Sections 305(1)(d) and (g) far too broadly and that if the ALJ's ruling is allowed to stand, there will be no limits on what could be demanded by providers under the aegis of impairment of efficiency or novel or specialized access arrangements.

Ameritech Michigan also argues that the ALJ misunderstood MCI's request and its technical implications. Ameritech Michigan stresses that its existing equipment cannot be converted to GR303 capability for use in the manner described in MCI's bona fide request. Accordingly, Ameritech Michigan urges the Commission not to be misled by MCI's attempts to minimize the differences between Ameritech Michigan's existing equipment and the GR303 equipment specified in the bona fide request.

Ameritech Michigan also reiterates that MCI can use either virtual or physical collocation to achieve exactly the same results as it sought through the bona fide request. Moreover, Ameritech Michigan asserts that Section 356 of the MTA establishes virtual collocation as the primary method for interconnection between providers. Ameritech Michigan also states that its

interconnection agreement with MCI provides for both virtual and physical collocation. Additionally, Ameritech Michigan stresses that MCI failed to present any evidence bearing on the cost effectiveness of collocation in comparison to the cost of its bona fide request. Indeed, Ameritech Michigan asserts that the cost of the bona fide request approach could well be higher than the cost of virtual collocation without gaining any additional efficiencies. According to Ameritech Michigan, the charges for virtual collocation would recover exactly the same kinds of costs for which MCI acknowledged it would bear responsibility under the arrangement contemplated in the bona fide request. Ameritech Michigan insists that the only substantial difference between the bona fide request and virtual collocation is that under the bona fide request approach Ameritech Michigan will be forced to buy the equipment for MCI and bear the upfront capital costs. Ameritech Michigan asserts that the real reason that MCI is arguing that the GR303 equipment is an unbundled network element can be traced to the advantage of the total service long run incremental cost (TSLRIC) pricing standard for network elements required by the MTA and MCI's desire to avoid paying the embedded costs associated with acquiring such equipment.

Ameritech Michigan also argues that nothing in the Commission's October 3, 1995 order in Case No. U-10647, which involved an interconnection arrangement between Ameritech Michigan and City Signal, Inc., (City Signal case) entitles MCI to force Ameritech Michigan to purchase and install new equipment dedicated solely to MCI's use. According to Ameritech Michigan, in the City Signal case, the issue was City Signal's desire to extend copper tie cables to City Signal's equipment location outside of Ameritech Michigan's central offices so that City Signal could connect its equipment to unbundled loops without the necessity of using

collocation. Indeed, Ameritech Michigan stresses that the City Signal case is distinguishable because City Signal was responsible for payment of all costs of extending copper tie cables outside of Ameritech Michigan's central offices and City Signal performed the installation of its own equipment and combined the unbundled loops with its own transport. According to Ameritech Michigan, in the instant case, MCI requests that Ameritech Michigan pay all costs and do all the work associated with the bona fide request.

Ameritech Michigan also objects to the ALJ's comment that a copy of the Commission's order in this case should be placed in the docket of Case No. U-11104, which involves an investigation of Ameritech Michigan's application for interLATA relief. According to Ameritech Michigan, this proceeding involves nothing more than a dispute over the interpretation of a contract and the application of law. Accordingly, Ameritech Michigan argues that its exercise of its right to disagree cannot be interpreted as evidence of any kind of anticompetitive intent. Moreover, Ameritech Michigan argues that its position in this case in no way limited MCI's entry into the local exchange marketplace, precluded MCI's use of GR303 equipment, or prevented MCI from doing exactly what it requested in the bona fide request through use of collocation.

Finally, Ameritech Michigan insists that granting MCI's complaint would be contrary to public policy. According to Ameritech Michigan, this case simply constitutes MCI's attempts to force Ameritech Michigan to bear the costs of acquiring new equipment. Ameritech Michigan argues that it should not be forced to supply new equipment to MCI or to anyone else and that unbundling requirements should be limited to existing facilities and equipment. Ameritech Michigan draws a parallel to the "essential facilities" doctrine that has evolved in federal antitrust

law. According to Ameritech Michigan, courts have recognized that when one firm in a competitive market controls a facility deemed essential for competition, that firm may be obligated to provide its competitors with access to the essential facility, if feasible, on terms that are reasonable and nondiscriminatory. However, Ameritech Michigan stresses that a facility that does not exist in its network can hardly be considered essential. Additionally, citing In Re Retail Wheeling Tariffs, 227 Mich App 442; __ NW2d__ 1998, Ameritech Michigan maintains the Michigan Court of Appeals implied that the unbundling of electric operations and transmission services relates to existing facilities, not to the purchase and installation of new equipment. Moreover, Ameritech Michigan insists that it is simply improper for its competitors to be allowed to use Ameritech Michigan's capital budget to avoid the legitimate costs of providing their portions of facilities-based basic local exchange service. Ameritech Michigan insists that if the PFD is allowed to stand, it could be forced by every competitor to include any technology, feature, functionality, or device that could conceivably be used to provide a telecommunications service without regard to whether Ameritech Michigan has any experience in using the equipment or any plans to ever use the equipment or its functionality as a part of its own basic bundled service offerings. According to Ameritech Michigan, the import of the PFD is that an ILEC will be required to purchase entirely new functionalities for each and every requesting carrier and to combine those functionalities in an endless variety of network elements, combinations, and platforms. Taking MCI's request to its logical extreme, Ameritech Michigan states that it could be forced to purchase a central office switch or similar equipment that would be dedicated to the exclusive use and control of the requesting carrier. Moreover, Ameritech Michigan contends that if a facilities-based provider were allowed to shift the burden of

acquiring, financing, engineering, building, provisioning, and maintaining all elements of its network, including those elements that are not part of the ILEC's network, there would be no incentive for a competitor to ever invest in its own facilities.

In response, MCI argues that an existing capability, such as GR303 technology, that is not currently in Ameritech Michigan's network is still a "network element" within the meaning of the interconnection agreement.¹⁵ MCI asserts that digital loop carrier equipment can be used in the provision of telecommunication services and that GR303 capability constitutes a feature, function, or capability of digital loop carrier equipment. Therefore, MCI contends that Section 153(29) of the FTA clearly supports its argument that digital loop carrier equipment having GR303 capability constitutes a network element. MCI also insists that Paragraphs 249 and 261 of the FCC's First Report and Order support its contention that an ILEC must provide a particular capability even if it is not currently used in the ILEC's network. According to MCI, Paragraphs 249 and 261 of the First Report and Order clarify that the language "used in telecommunications service" in the definition of network element constitutes a limitation that was meant to distinguish network facilities from other aspects of telecommunications, such as billing information.

MCI insists that the Iowa Utilities Board decision does not support Ameritech Michigan's concept of a network element. To the contrary, MCI stresses that Iowa Utilities Board

¹⁵According to Schedule 1.2-9 of the interconnection agreement, the term network element is defined in Section 153(29) of the FTA, which provides: "The term 'Network Element' means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, data bases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service."

specifically endorsed the FCC's finding in Paragraph 198 of the First Report and Order that Sections 251(c)(2) and 251(c)(3) of the FTA obligate an ILEC to include modifications to its facilities to the extent necessary to accommodate interconnection or access to network elements. Further, citing Paragraph 260 of the First Report and Order, which obligates ILECs to provide all of the features and functions of network elements "so that new entrants may offer services that compete with those offered by incumbents as well as new services," MCI maintains that it is obvious that Ameritech Michigan must provide capabilities that it does not currently use, otherwise no new services could be developed.

MCI also maintains that Ameritech Michigan has admitted that the bona fide request is technically feasible. Further, citing Paragraph 554 of the First Report and Order, MCI maintains that Ameritech Michigan has the burden of demonstrating the technical infeasibility of a particular method of interconnection or access at any individual point. Because Ameritech Michigan admitted that MCI's bona fide request was technically feasible and did not come forward with any evidence to rebut the presumption of feasibility raised by Ameritech Michigan's use of similar network architecture elsewhere in its network, MCI insists that the only conclusion that the Commission can reach is that the use of digital loop carrier equipment with GR303 capability as requested by MCI is technically feasible.

Citing Paragraph 9.1.3 of the interconnection agreement, MCI maintains that Ameritech Michigan must make available network elements without regard to whether Ameritech Michigan uses such elements in its network. Indeed, MCI maintains that Paragraph 9.1.3 clearly envisions a network element, such as digital loop carrier equipment with GR303 capabilities. Moreover, MCI maintains that in the context of the interconnection agreement, the term

"available" means what can be obtained even if it requires special construction. MCI insists that digital loop carrier equipment with GR303 capability is available through Ameritech Michigan because Ameritech Michigan has the ability to obtain it. According to MCI, the interconnection agreement provides that the term available is defined as the meaning ascribed to that term in the FTA. Citing Sections 509 and 551 of the FTA, which concern the rapidly developing array of Internet services and alternative blocking technology, respectively, MCI contends that the notion of availability embodied in the FTA is not limited to items that are currently used by Ameritech Michigan. MCI contends that Ameritech Michigan presented no evidence that any supplier of digital loop carrier equipment having GR303 capability has refused to supply such equipment to Ameritech Michigan.

Citing Schedule 2.2, Paragraph 2 of the interconnection agreement, MCI argues that in responding to a bona fide request, Ameritech Michigan is obligated to provide information regarding terms and timetables "for those items which are technically feasible." In addition, citing Paragraph 9.3.3 of the interconnection agreement,¹⁶ MCI maintains that Ameritech Michigan is required to provision what has been requested in the bona fide request if it is technically feasible to do so.

¹⁶Paragraph 9.3.3 states that: "Upon [MCImetro's] request Ameritech shall perform the functions necessary to combine Ameritech's Network elements, even if those elements are not ordinarily combined in Ameritech's network; provided that such combination is (i) technically feasible and (ii) would not impair the ability of other Telecommunications Carriers to obtain access to unbundled Network elements or to Interconnect with Ameritech's network. In addition, upon Ameritech's request that is consistent with the above criteria and subject to Section 9.1.4, Ameritech shall perform the functions necessary to combine or connect Ameritech's Network elements with elements or other equipment or facilities possessed, leased or owned by [MCImetro] in any technically feasible manner to allow [MCImetro] to provide a Telecommunications Service." (Emphasis in original.)

MCI also insists that Ameritech Michigan is required to combine network elements pursuant to the bona fide request. Citing Paragraph 9.3.5.2 of the interconnection agreement, which contemplates that a combination of unbundled loops with concentration or multiplexing equipment could be requested via the bona fide request process, MCI asserts that nothing in the Iowa Utilities Board decision excuses Ameritech Michigan from its obligation to make such combinations available to MCI. According to MCI, the Iowa Utilities Board decision did not spell the death of access by competitive local exchange carriers (CLECs) to combinations of network elements. Indeed, MCI maintains that the Eighth Circuit Court of Appeals recognized that the FTA requires ILECs to permit CLECs to utilize combinations of network elements to provide finished telecommunication services.

MCI also relies on the Commission's January 28, 1998 order in Case No. U-11280 for the proposition that the Iowa Utilities Board decision did not preempt state law and does not prohibit the Commission from mandating various elements or combinations of elements under the MTA. In so doing, MCI stresses that Sections 251(d)(3) and 261(c) of the FTA explicitly preserve the Commission's authority to impose requirements that accelerate competition in the local exchange market beyond what federal law would otherwise mandate. Further, MCI points out that Section 30.6 of the interconnection agreement specifies that the agreement is controlled and governed by the laws of the State of Michigan. Accordingly, it asserts that the Eighth Circuit Court of Appeals' decision in Iowa Utilities Board has not negated Michigan law and the Commission's prior determinations regarding Ameritech Michigan's obligation to provide network elements and combinations.

In response to Ameritech Michigan's assertion that it is entitled to renegotiate the interconnection agreement to delete any provision that is based on 47 CFR 51.351(c)-(f), which were vacated by the Iowa Utilities Board decision, MCI argues that Ameritech Michigan failed to identify any provision in the interconnection agreement derived solely on the vacated FCC rules. MCI also insists that none of the provisions of the interconnection agreement that Ameritech Michigan seeks to vacate were relied upon by MCI as a basis to enforce compliance with the bona fide request. Moreover, MCI reiterates that Ameritech Michigan has an independent obligation pursuant to Michigan law to provide the combination described in the bona fide request.

MCI also asserts that nothing in Section 355 of the MTA prohibits Ameritech Michigan from provisioning unbundled new services or limits Ameritech Michigan's provisioning of unbundled elements to only existing services. Rather, MCI argues that Section 356 of the MTA explicitly allows providers to enter into an agreement that allows for interconnection "on other terms and conditions than through use of virtual collocation."

MCI contends that Ameritech Michigan's refusal to provision digital loop carrier equipment with GR303 capability violates Sections 305(1)(d) and (g) of the MTA. Section 305(1)(d) prohibits Ameritech Michigan from impairing the speed, quality, or efficiency of lines used by another provider. Because MCI uses digital loop carrier equipment with GR303 capability and because such equipment is significantly more efficient than other methods, MCI insists that Ameritech Michigan's failure to offer digital loop equipment with GR303 capability impairs the efficient use of lines by MCI. Likewise, MCI maintains that Ameritech Michigan violates Section 305(1)(g) by refusing to provide novel or specialized access service requirements.

Moreover, MCI insists that there is nothing vague about the requirements of Sections 305(1)(d) and (g). Additionally, MCI maintains that the possibility of achieving its interconnection through collocation does not mitigate Ameritech Michigan's violation of Sections 305(1)(d) and (g) of the MTA. According to MCI, collocation is not a viable alternative to the bona fide request because collocation will result in additional expenses and because collocation adds nothing to the functionality of the equipment. Therefore, MCI stresses that requiring it to bear the additional costs of collocation is illegal, unnecessary, and anticompetitive.

MCI acknowledges that the Eighth Circuit Court of Appeals' decision in Iowa Utilities Board overruled an FCC rule that required ILECs to provide unbundled network elements and access to such elements at levels of quality that are superior to those levels at which the ILEC provides service to itself. Iowa Utilities Board, *supra*, at 812-813. However, MCI maintains that the Iowa Utilities Board decision does not prohibit states from having rules similar in effect to the FCC's rule. Additionally, MCI argues that Ameritech Michigan should not be allowed to argue that digital loop carrier equipment with GR303 capability is superior to Ameritech Michigan's network. Citing Mr. Alexander's testimony, MCI points out that Ameritech Michigan has asserted that during heavy usage some of MCI's customers may not be able to get a dial tone.¹⁷ Moreover, MCI maintains that Ameritech Michigan's position on this issue was waived due to its failure to raise the issue in a timely manner.

MCI also contends that it is not required by the interconnection agreement, the FTA, or the MTA to use collocation to achieve interconnection with Ameritech Michigan's network. To the contrary, MCI insists that Section 9.1.1 of the interconnection agreement requires Ameritech

¹⁷MCI maintains that it will engineer its network so as to make this risk essentially nonexistent. In any event, MCI asserts that only its customers would be affected.

Michigan to provide MCI with access to Ameritech Michigan's network elements on an unbundled basis at any technically feasible point and also to provide access to all of the unbundled network element's features, functions, and capabilities as required by the FTA, the FCC, and the Commission. Citing the Commission's February 23, 1995 order in Case No. U-10647 and the January 28, 1998 order in Case No. U-11280, MCI insists that it is under no obligation under state law to use collocation to interconnect with Ameritech Michigan's network. Likewise, citing Paragraphs 549 and 550 of the First Report and Order, MCI maintains that it is clear that the FCC and the FTA do not obligate use of collocation as the only method of interconnection or access to unbundled elements.

The Commission finds that MCI has established that Ameritech Michigan's refusal to respond to MCI's bona fide request for interconnection through use of digital loop carrier equipment having GR303 capability is inconsistent with the interconnection agreement and a violation of the MTA.

The Commission is persuaded that the interconnection agreement between Ameritech Michigan and MCI obligates Ameritech Michigan to respond to MCI's bona fide request with a proposal for Ameritech Michigan to provision and interconnect its network to MCI's network in the manner proposed in the bona fide request. Ameritech Michigan's contention that it is under no obligation to provide MCI with access to any network element that does not currently exist in Ameritech Michigan's network is not well taken. Considered as a whole, the interconnection agreement between Ameritech Michigan and MCI clearly contemplates that MCI has the right to make a bona fide request for any "features, capabilities, functionalities, Network Elements, or

Combinations that are not otherwise provided by the terms of this agreement." Article II, Section 2.2, p. 5 of the interconnection agreement.

The ALJ concluded that Ameritech Michigan is required to provide MCI with digital loop carrier equipment having GR303 capability without regard to whether Ameritech Michigan currently uses such equipment or capability in its network. The Commission agrees. Ameritech Michigan does not seriously contend that digital loop carrier equipment having GR303 capability is not "a facility or equipment used in the provision of a telecommunications service," which is the definition of the term network element embodied in the interconnection agreement pursuant to Schedule 1.2 of the agreement. Indeed, in his direct testimony, Ameritech Michigan witness Alexander acknowledged that MCI currently uses GR303 capable equipment in its network in other areas of the country. Moreover, it is well established that Ameritech Michigan also deploys the same type of equipment in its system, but not in the same location and not with the same capabilities requested by MCI. Rather, the thrust of Ameritech Michigan's argument is that because Ameritech Michigan does not currently deploy digital loop carrier equipment having GR303 capability in its central offices in the manner requested by MCI, it is under no obligation to acquire such equipment pursuant to MCI's bona fide request.

The Commission is empowered by Section 204 of the MTA to resolve disputes between telecommunications providers unable to agree on a matter related to a regulated telecommunication issue including, but not limited to, any matter prohibited by Section 305 of the MTA. In resolving the dispute between Ameritech Michigan and MCI over the interpretation of Schedule 1.2 of their interconnection agreement, the Commission bears in mind that among the objectives enumerated in Section 101 of the MTA are the encouragement of

competition, the entry of new providers, and the development of new technologies. In so doing, the Commission finds that MCI's interpretation of the term network element does not obliterate the distinction between the concepts of "availability" and "technical feasibility," as claimed by Ameritech Michigan. Rather, the Commission finds that Ameritech Michigan's position regarding interpretation of the term network element in the interconnection agreement is unduly restrictive and, if adopted, would constitute a significant barrier to the development of a competitive marketplace, the entry of new providers, and the development of new technologies. Moreover, as noted in the Commission's January 28, 1998 order in Case No. U-11280, the FTA explicitly preserves the Commission's authority to impose requirements pursuant to state law that accelerate competition in the local marketplace beyond what federal law would otherwise mandate. 47 USC 251(d)(3), 261(c). The Commission also found in its January 28, 1998 order in Case No. U-11280 that the Eighth Circuit Court of Appeals' decision in Iowa Utilities Board does not preempt state law and does not prohibit the Commission "from mandating various elements or combinations of elements under state law." Order, Case No. U-11280, p. 22.

Ameritech Michigan also does not deny that MCI's bona fide request is technically feasible. Indeed, Ameritech Michigan acknowledges that the network architecture proposed in the bona fide request could be achieved through either virtual or physical collocation. However, nothing in the interconnection agreement, the FTA, or the MTA requires MCI to interconnect with Ameritech Michigan's network through use of collocation. Rather, MCI may request interconnection with Ameritech Michigan's network in any technically feasible manner pursuant to Section 9.3.3 of the interconnection agreement. MCI made such a request to Ameritech Michigan. Accordingly, Ameritech Michigan is obligated to perform the functions necessary to

combine Ameritech Michigan's network elements to satisfy MCI's request even if the network elements are not ordinarily combined in Ameritech Michigan's network.¹⁸ As explained by MCI, the interconnection described in the bona fide request will be dedicated solely to MCI's use. Accordingly, the addition of the equipment and functionalities requested by MCI will have no effect on either Ameritech Michigan or any other provider. Therefore, the Commission rejects Ameritech Michigan's contention that granting MCI's complaint will require Ameritech Michigan to reconstruct its network to incorporate the customer design features of its competitors. MCI is not asking for Ameritech Michigan to reconstruct Ameritech Michigan's network. Rather, it is asking Ameritech Michigan to interconnect loops and transports through use of equipment dedicated solely to MCI. There is little dispute that MCI's request is technically feasible and there is significant evidence that the GR303 compliant equipment will allow MCI to operate its local exchange network more efficiently by reducing the need for transport and at lower expense by avoiding the cost of collocation.

The Commission also finds that the ALJ properly rejected Ameritech Michigan's argument that it is not required to combine network elements in the manner requested by MCI. Ameritech Michigan's argument is based on the Eighth Circuit Court of Appeals' interpretation of Section 251(c)(3), which vacated 47 CFR 51.315(c)-(f). In Iowa Utilities Board, *supra*, the Eighth Circuit Court of Appeals stated that the last sentence of Section 251(c)(3) of the FTA unambiguously indicated that requesting carriers should combine unbundled elements themselves. Accordingly, it found that the FCC exceeded Congress' intent by requiring ILECs

¹⁸The bona fide request process requires MCI to fully compensate Ameritech Michigan for all costs associated with the bona fide request and the provisioning of digital loop carrier equipment in the manner requested. MCI has expressed its willingness to comply with that requirement.

to provision new entrants with assembled platforms. However, the Commission recognized in its January 28, 1998 order in Case No. U-11280 that the Iowa Utilities Board decision does not pre-empt state law and merely reflects the Eight Circuit Court of Appeals' conclusion that the FCC overstepped its statutory authority in requiring ILECs to combine multiple network elements. As such, the Iowa Utilities Board decision does not inhibit this Commission from mandating various elements or combinations of elements under state law. Indeed, the FTA explicitly preserves a state's authority to impose requirements that accelerate competition in the local marketplace beyond what federal law would otherwise mandate. 47 USC 251(d)(3) and 261(c).

The interconnection agreement clearly contemplates that MCI may make requests for combinations of network elements pursuant to the bona fide request process. Citing Section 29.3 of the interconnection agreement, Ameritech Michigan insists it has the right to demand renegotiation of the interconnection agreement to reflect the Eighth Circuit Court of Appeals vacation of 47 CFR 51.315(c)-(f) to eliminate any provisions based on these rules. However, the Commission is persuaded that Ameritech Michigan's argument is premature and does not control the outcome of this proceeding.

To begin with, there is no evidence that Ameritech Michigan ever demanded renegotiation of the interconnection agreement in writing in accordance with the requirements of Section 29.3. Moreover, although the Eighth Circuit Court of Appeals decision vacated 47 CFR 51.315(c)-(f), MCI disputes that any of the provisions in the interconnection agreement are based solely on those rules. Additionally, MCI disputes that Ameritech Michigan is entitled to have the

interconnection agreement renegotiated. Accordingly, at this time, the Commission finds no basis for ignoring the clear and unambiguous provisions of the interconnection agreement.

Moreover, the Commission agrees with the ALJ that Ameritech Michigan's refusal to respond to MCI's bona fide request constitutes a violation of Sections 305(d) and (g) of the MTA. MCI's request for digital loop carrier equipment having GR303 capability was clearly aimed at optimizing the efficient use of lines used by MCI to serve local exchange customers. GR303 capability will allow MCI to reduce the amount of transport needed to serve its customers. Accordingly, Ameritech Michigan's denial of access to GR303 capability constitutes a violation of Section 305(1)(d) of the MTA.

The Commission also finds that Ameritech Michigan's refusal to respond to the bona fide request also constitutes a violation of Section 305(1)(g), which requires Ameritech Michigan to meet the novel or specialized access service requirements of MCI. The evidence establishes that MCI desires to operate its network through use of digital loop carrier equipment having GR303 technology. Because MCI is entitled to request interconnection at any technically feasible point, it was reasonable for MCI to request Ameritech Michigan to provide access to digital loop carrier equipment having GR303 capability at its chosen point of interconnection.

Additionally, the Commission finds that Ameritech Michigan may not claim the possibility of physical or virtual collocation as a defense to its violation of Sections 305(1)(d) and (g) of the MTA. Although the first sentence of Section 356 specifically requires Ameritech Michigan to provide for virtual collocation at or near its central offices, the second sentence of Section 356 allows providers to enter into an agreement for interconnection on other terms and conditions. The FTA and interconnection agreement provide for interconnection at any technically feasible

point. The evidence in the record supports a finding that MCI's request for the location of digital loop carrier equipment having GR303 capability in Ameritech Michigan's central offices is technically feasible. Moreover, the Commission twice recently acknowledged that collocation is not required for interconnection. In its February 23, 1995 order in Case No. U-10647, the Commission rejected Ameritech Michigan's efforts to force City Signal to use collocation to establish a point of interconnection between their end offices. Likewise, in its January 28, 1998 order in Case No. U-11280, the Commission held that "a competing provider subscribing to common transport is under no obligation to use dedicated trunk ports or collocation as a means of using common transport in conjunction with other unbundled network elements to provide local exchange service." January 28, 1998 order, Case No. U-11280, p. 28.

Finally, the Commission is not persuaded by Ameritech Michigan's arguments that the Eighth Circuit Court of Appeals' decision in Iowa Utilities Board prohibits ILECs from being forced to provide superior quality of access or network elements than they provide to themselves. As previously noted, in its January 28, 1998 order in Case No. U-11280, the Commission found that the Eighth Circuit Court of Appeals' decision in Iowa Utilities Board rejected only the FCC's interpretations of the FTA, but did not foreclose states from regulating access to ILECs' networks in a manner that would enhance local competition. Moreover, the Commission is not persuaded by Ameritech Michigan's arguments that digital loop carrier equipment with GR303 capability constitutes superior technology in the context of this case. Rather, the Commission finds that it would be more appropriate to describe the GR303 capable equipment sought by MCI as being more useful to MCI than to Ameritech Michigan. However, the greater usefulness of the GR303 capable equipment is due directly to MCI's use of that

technology in its network architecture and Ameritech Michigan's reluctance to deploy such equipment in its network. Accordingly, because Ameritech Michigan and MCI have designed their networks differently, any attempt to determine the quality of digital loop carrier equipment having GR303 capability amounts to an apples versus oranges comparison.

For all of the above reasons, the Commission concludes that MCI has shown that Ameritech Michigan should be required to respond appropriately to its bona fide request for GR303 capable equipment. In reaching this conclusion, the Commission recognizes that the bona fide request process will likely require MCI and Ameritech Michigan to work together to resolve a number of matters that remain open.¹⁹ Accordingly, the Commission finds that the most appropriate response to MCI's complaint is to order Ameritech Michigan to respond appropriately by completing the bona fide request process as required by the interconnection agreement.

Case No. U-11104

MCI requested and the ALJ recommended that a copy of the Commission's final order in this case be considered in future applications by Ameritech Michigan for interLATA relief. To date, all such materials have been collected in the docket file in Case No. U-11104. The Commission finds that Ameritech Michigan's opposition to the ALJ's recommendation is not well taken. The subject matter of this case sheds light on Ameritech Michigan's method of responding to requests by competitors for assistance in interconnecting their local exchange networks to further competition. Accordingly, the Commission directs that a copy of the order in this proceeding should be placed into the docket file of Case No. U-11104.

¹⁹During redirect, MCI witness Gushue explained that the engineering departments of both Ameritech Michigan and MCI still need to work out many details in order for MCI's proposal to go forward.

Attorney Fees

Ameritech Michigan argues that the ALJ erred in recommending that the Commission award MCI attorney fees pursuant to Section 601(1) of the MTA. Ameritech Michigan insists that there is no basis in Section 601 or in any common law exception that justifies an award of attorney fees in the context of this case.

In response, MCI insists that Ameritech Michigan should be deemed to have waived any objection to an award of attorney fees by failing to respond to MCI's request for attorney fees in its answer. Additionally, MCI stresses that the Commission has already rejected similar Ameritech Michigan arguments in other matters and has determined that when a provider violates the MTA, an aggrieved party is made whole only if awarded attorney fees.

The Commission finds that Ameritech Michigan should not be required to reimburse MCI for the reasonable expenses that it incurred by bringing this complaint, including attorney fees. While the Commission has awarded attorney fees in other matters, such as in the September 30, 1997 order in Case No. U-11229, the Commission does not believe that it is appropriate to award them in this matter. The subject matter of this dispute involves a difference of opinion between the parties to a complicated interconnection agreement that presented a question of first impression in this state. Further, it does not appear that MCI was significantly affected by the delay occasioned by Ameritech Michigan's refusal to process the bona fide request.

Motion to Strike Testimony

Finally, Ameritech Michigan contends that the ALJ erroneously denied its motion to strike the testimony of MCI witness Gushue. Ameritech Michigan is concerned that the ALJ allowed

Mr. Gushue to testify despite the fact that his prefiled direct testimony contained no evidence about his qualifications, background, or foundation to present expert testimony. In lieu of granting Ameritech Michigan's motion to strike, the ALJ allowed MCI to question Mr. Gushue at the hearing regarding his qualifications. Ameritech Michigan complains that it was denied the opportunity to cross-examine Mr. Gushue regarding his credentials and qualifications. For these reasons, Ameritech Michigan insists that the ALJ's ruling should be reversed and that the testimony of Mr. Gushue stricken from the record.

In response, MCI maintains that Ameritech Michigan's attacks on Mr. Gushue's credentials were waived when Ameritech Michigan did not raise this issue in its brief. Additionally, MCI insists that Mr. Gushue clearly has appropriate credentials to present testimony in this matter. Moreover, MCI asserts that if Ameritech Michigan had any legitimate concerns about Mr. Gushue's credentials, it could have issued interrogatories on this subject, but it did not.

The Commission finds that Ameritech Michigan's exception should be rejected. While it is true that Mr. Gushue's prefiled direct testimony did not discuss his credentials, the Commission is not persuaded that Ameritech Michigan's right to cross-examine Mr. Gushue was unduly hampered by this shortcoming. The record demonstrates that the parties had an opportunity to conduct discovery and that Mr. Gushue was subject to a discovery deposition. Indeed, the parties agreed to have Mr. Gushue's deposition introduced as an exhibit to this proceeding. Further, Ameritech Michigan had an opportunity to cross-examine Mr. Gushue at the hearing regarding his credentials. Accordingly, the Commission is not persuaded that MCI's failure to include Mr. Gushue's credentials in his prefiled direct testimony constitutes error.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1991 PA 179, as amended by 1995 PA 216, MCL 484.2101 et seq.; MSA 22.1469(101) et seq.; 1969 PA 306, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.

b. Ameritech Michigan should be required to respond appropriately to MCI's bona fide request for unbundled access to GR303 compliant digital loop carrier equipment combined with loops and leased transport.

c. Ameritech Michigan should not be directed to pay the reasonable expenses and attorney fees incurred by MCI to bring this complaint.

d. Ameritech Michigan's motion to strike the testimony of Mr. Gushue should be denied.

e. A copy of the order in this proceeding should be filed in Case No. U-11104.

THEREFORE, IT IS ORDERED that:

A. Ameritech Michigan shall respond appropriately to MCImetro Access Transmission Services, Inc.'s bona fide request for unbundled access to Bellcore's General Requirement-303 compliant digital loop carrier equipment combined with loops and leased transport.

B. Ameritech Michigan's motion to strike the testimony of Christopher Gushue is denied.

C. A copy of the order in this case shall be filed in Case No. U-11104.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ John G. Strand

Chairman

(S E A L)

/s/ John C. Shea

Commissioner

/s/ David A. Svanda

Commissioner, concurring in part and
in part in a separate opinion.

dissenting

By its action of June 3, 1998

/s/ Dorothy Wideman

Its Executive Secretary

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

Chairman

Commissioner

dissenting

Commissioner, concurring in part and
in part in a separate opinion.

By its action of June 3, 1998.

Its Executive Secretary

In the matter of the application and complaint of)
MCIMETRO ACCESS TRANSMISSION SERVICES,)
INC., against AMERITECH MICHIGAN requesting)
non-discriminatory, efficient and reasonable use of)
unbundled loops using GR303 capability.)
_____)

Case No. U-11583

Suggested Minute:

"Adopt and issue order dated June 3, 1998 granting the application and complaint filed by MCImetro Access Transmission Services, Inc., against Ameritech Michigan and directing Ameritech Michigan to respond in an appropriate manner to the bona fide request submitted by MCImetro Access Transmission Services, Inc., as set forth in the order."

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of and complaint of)
MCIMETRO ACCESS TRANSMISSION SERVICES,)
INC., against AMERITECH MICHIGAN requesting)
non-discriminatory, efficient and reasonable use of)
unbundled loops using GR303 capability.)

Case No. U-11583

SEPARATE OPINION OF COMMISSIONER DAVID A. SVANDA
CONCURRING IN PART AND DISSENTING IN PART

(Submitted on June 3, 1998 concerning order issued on same date)

Today in Case No. U-11583 the Commission ordered Ameritech Michigan to respond "appropriately to MCImetro Access Transmission Services, Inc.'s bona fide request for unbundled access to Bellcore's General Requirement-303 compliant digital loop carrier equipment combined with loops and leased transport." I concur with the majority opinion and support the complainant's request for the deployment of this new technology. I agree with the majority opinion at paragraph 1, page 30 when it states, "There is little dispute that MCI's request is technically feasible and there is significant evidence that the GR303 compliant equipment will allow MCI to operate its local exchange network more efficiently by reducing the need for transport and at lower expense by avoiding the cost of collocation." In my view, it is imperative that technically feasible technology, such as the GR303, be made available to MCI or any other licensed competitive local exchange carrier (CLEC) who requests it even though the incumbent LEC may not choose it for its own customers. This is the nature of competition. Providers who offer better and more efficient service through deployment of new and better technology will benefit, as will telecommunications users in Michigan.